

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**JOHN E. TAYLOR, JR.,
No. R66376,**

Plaintiff,

vs.

LISA GAYLE, et al.,

Defendants.

Case No.: 11-cv-00104-JPG-PMF

ORDER

GILBERT, District Judge:

Pursuant to the mandate of the Court of Appeals for the Seventh Circuit in a related case, *Taylor v. Brown*, 11-cv-631-GPM (now No. 11-cv-631-NJR), the Court returns to this long-closed case to correct the record.

In *Taylor v Gayle*, S.D. Ill. Case No. 11-cv-104-JPG, a failure-to-protect claim against James Brown (“Count 3”) was severed into a new case, *Taylor v. Brown*, 11-cv-631-GPM. The *Brown* case, No. 11-cv-631, was dismissed with prejudice pursuant to FED.R.CIV.P. 41(b), and Brown’s costs were taxed against Plaintiff Taylor. The defendants in the *Gayle* case, No. 11-cv-104, were ultimately granted summary judgment and that case was closed in 2013. Plaintiff filed an appeal in *Brown*, 11-cv-631, challenging the severance and the dismissal of the case.

In *Taylor v. Brown*, __F.3d __, 2104 WL 9865341 (7th Cir. June 2, 2015), the Court of Appeals for the Seventh Circuit recently ruled that the severance order in this case, *Gayle*, No. 11-cv-104, was erroneous; *Brown*, No. 11-cv-631, never should have come into existence; the subsequent dismissal and taxation of costs were erroneous, and Plaintiff was due a refund for all costs associated with the litigation of *Brown*, No. 11-cv-631.

IT IS HEREBY ORDERED that, in accordance with the mandate of the Seventh Circuit, the order of severance in this case, *Gayle*, No. 11-cv-104, Doc. 36, is **VACATED**.

IT IS FURTHER ORDERED that Plaintiff Taylor's "Response to Order to Show Cause" (Doc. 41) is **CONSTRUED** as a motion for leave to amend the complaint to omit "Count 3" against Defendant Brown. Plaintiff's motion to amend (Doc. 41) is **GRANTED *nunc pro tunc***; Defendant Brown is thus terminated as a defendant in *Gayle*, No. 11-cv-104.

IT IS FURTHER ORDERED that, for the sake of clarity, the Order denying Plaintiff's motion for an extension of time (Doc. 47) is **VACATED**, and the order denying Plaintiff's motion to amend or alter the severance order (Doc. 196) is **VACATED**.

IT IS FURTHER ORDERED that the Judgment in this case (Doc. 192) shall not be amended, in that it reflects the severance order, but otherwise reflects that there was no judgment in Plaintiff's favor relative to Count 3 against Defendant Brown. Consistent with the appellate court's ruling, allowing the complaint to be amended so as to omit Count 3 against Brown removed Brown from the case in accordance with FED.R.CIV.P. 15(a).

The Clerk of Court is **DIRECTED** to have the record reflect the aforementioned changes, and to send Plaintiff a copy of the revised docket sheet and this order. A separate order will issue relative to *Brown*, No. 11-cv-631.

IT IS SO ORDERED.

DATED: July 1, 2015

s/J. Phil Gilbert
United States District Judge